



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Tim P. Horwood, et al.

Conf. No.: 4906

Serial No.: 10/606,605

Art Unit: 3751

Filed: June 26, 2003

Examiner: Phillips, Charles E.

For: PORTABLE SPA

Mail Stop: Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

## TRANSMITTAL

Sir:

Transmitted herewith for entry and consideration in the above-identified U.S. patent application are:

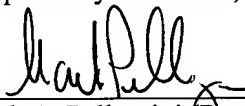
1. Fee Transmittal for FY 2005 (1 pg.);
2. U.S. Patent and Trademark Office Credit Card Payment Form (1 pg.);
3. Petition Under 37 C.F.R. §1.183 Suspension of Rules in the Interest of Justice (5 pp.);
4. Exhibit A: Declaration of Tim P. Horwood (4 pp.);
5. Exhibit B: Letter to Mr. Keith Lovell dated September 10, 2004 (3 pp.);
6. Exhibit C: Notice of Recordation of Assignment Document (3 pp.); and
7. Exhibit D: Copy of Response to Election Requirement as submitted to the USPTO on September 20, 2004 (5 pp.).

The Commissioner is, however, hereby authorized to charge any underpayment of fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2624.

Respectfully submitted,

Date:

12/03/04

  
Mark A. Pellegrini (Reg. No. 50,233)  
J. Mark Holland & Associates,  
a Professional Law Corporation  
3 Civic Plaza, Suite 210  
Newport Beach, California 92660  
Telephone: 949-718-6750  
PTO Customer Number 21,259

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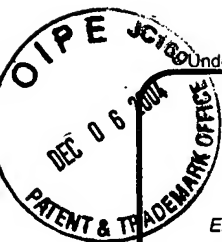
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Mark A. Pellegrini, Reg. No. 50,233

DATE

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# FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT

(\$ 130.00)

**Complete if Known**

Application Number	10/606,605
Filing Date	06/26/2003
First Named Inventor	Horwood
Examiner Name	Phillips, Charles E.
Art Unit	3751
Attorney Docket No.	HORWO-P3197

**METHOD OF PAYMENT (check all that apply)**☐ Check ☒ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit  
Account  
Number  
Deposit  
Account  
Name

08-2624

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	790	2001	395	Utility filing fee	
1002	350	2002	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) (\$ 0)

**2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE**

	Extra Claims	Fee from below	Fee Paid
Total Claims	-20** =	X	
Independent Claims	-3** =	X	
Multiple Dependent			

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	88	2201	44	Independent claims in excess of 3
1203	300	2203	150	Multiple dependent claim, if not paid
1204	88	2204	44	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$ 0)

\*\*or number previously paid, if greater; For Reissues, see above

**FEE CALCULATION (continued)****3. ADDITIONAL FEES**

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	430	2252	215	Extension for reply within second month	
1253	980	2253	490	Extension for reply within third month	
1254	1,530	2254	765	Extension for reply within fourth month	
1255	2,080	2255	1,040	Extension for reply within fifth month	
1401	340	2401	170	Notice of Appeal	
1402	340	2402	170	Filing a brief in support of an appeal	
1403	300	2403	150	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,370	2453	685	Petition to revive - unintentional	
1501	1,370	2501	685	Utility issue fee (or reissue)	
1502	490	2502	245	Design issue fee	
1503	660	2503	330	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	130.00
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 130.00)

**SUBMITTED BY**

(Complete if applicable)

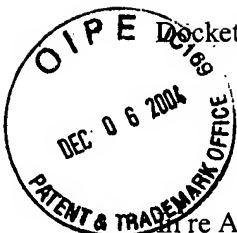
Name (Print/Type)	Mark A. Pellegrini	Registration No. (Attorney/Agent)	50,233	Telephone	949-718-6750
Signature		Date	12/03/04		

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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— DAC  
Eph



Docket No. HORWO-P3197

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of: Tim P. Horwood, et al. Conf. No.: 4906  
Serial No.: 10/606,605 Art Unit: 3751  
Filed: June 26, 2003 Examiner: Phillips, Charles E.  
For: PORTABLE SPA

Mail Stop: Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

PETITION UNDER 37 C.F.R. § 1.183 SUSPENSION OF RULES  
IN THE INTEREST OF JUSTICE

Sir:

In response to the Decision on Petition Under 37 C.F.R. 1.47(a) mailed October 24, 2004 in the above-identified patent application, Applicant and joint inventor, Tim P. Horwood hereby petitions the Patent Office under 37 C.F.R. §1.183 in an extraordinary situation, as justice requires, to suspend or waive any requirement of the signatures of both assignees or their legal representative(s) to prosecute the above-identified application.

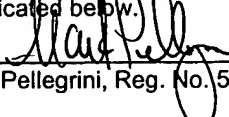
Furthermore, Applicant respectfully request the following:

- (1) entering of the Response to the Election Requirement submitted on September 20, 2004, and enclosed herewith; and
- (2) favorable consideration of the Declaration of Tim P. Horwood, executed September 20, 2004, and enclosed herewith.

12/07/2004 WABDELRI 00000072 082624 10606605  
01 FC:1462 270.00 DA 130.00 DP

Certificate of Mailing

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Mark A. Pellegrini, Reg. No. 50,233 DATE 12/3/04

12/07/2004 WABDELRI 00000072 10606605  
01 FC:1464 130.00 DP

Applicant, Tim P. Horwood has taken all actions reasonably required to be entitled to continue this prosecution.

The circumstances supporting continued prosecution by Mr. Horwood in the interest of justice are at least somewhat reflected in the existing PTO records in this application, and include at least the following:

1. The application for this case is supported by a declaration signed by all three joint inventors. The present issue therefore relates to continuing prosecution and representation of those inventors, rather than a lack of a signed declaration regarding inventorship and related matters.
2. One of the three joint inventors, John E. Pope, assigned all right title and interest in and to the parent application (09/491,361), as well as any future continuation applications (including the above-identified '605 continuation application), to the other two joint inventors, Mr. Horwood and Keith W. Lovell. That assignment was recorded on January 26, 2000 at Reel/Frame 010553/0625. (Declaration of Tim P. Horwood, Ex. A).
3. Due to a dispute between the two remaining inventors/nominal assignees (Mr. Horwood and Mr. Lovell), their previous counsel (Craig S. Summers of the Knobbe Martens firm) withdrew from representation of Applicants. That withdrawal is reflected in the PTO Notice Regarding Change of Power of Attorney in this application, mailed by the PTO on or about July 14, 2004.
4. Despite Mr. Horwood's efforts to resolve the dispute with joint inventor Lovell, Mr. Lovell has at all times been unwilling to reach any reasonable resolution, and therefore remains effectively unavailable for coordinated representation in this continuing prosecution. Among other things, Mr. Lovell has refused to provide any comments, direction, authorization, or instruction directed to any end regarding the outstanding action in the present application.

### DISCUSSION

On September 20, 2004 Applicant filed a petition under 37 C.F.R. §1.47(a) to allow continued prosecution of the above-reference application. A decision, dismissing the aforementioned petition, was mailed on October 25, 2004. Having discussed the decision with Applicant's representative, Mark Pellegrini, Senior Petitions Attorney, Patricia Faison-Ball determined that, under the circumstances, the most appropriate and favorably decision might be obtained by filing a petition, in the "interest of justice", under 37 C.F.R. §1.183.

Accordingly, Applicant and joint inventor, Tim Horwood, is filing this petition in the "interest of justice" because joint inventor Lovell is refusing to continue participating in the prosecution of this application. Rather than allow the application to go abandoned, Mr. Horwood is asking to be given control to prosecute the application without Mr. Lovell's involvement, or at least to be allowed to keep alive the application so that the opportunity for appropriate patent protection is not lost via abandonment but instead should continue with substantive examination.

The Applicant remains the interested party and is desirous of patent protection in the present application. To date, Mr. Lovell has not responded to communications from Mr. Horwood regarding this issue (see attached Horwood Dec., Exhibit B). Mr. Lovell has been provided with a copy of a proposed Response to the March 19<sup>th</sup> Election Requirement, but refuses to acknowledge same, or give Mr. Horwood any instructions regarding same.

In the interest of Applicant's rights of representation with the present application, Applicant also respectfully requests that the PTO allow, Mr. Horwood's attorneys of record, J. Mark Holland and Associates be allowed to prosecute this application for Applicant.

In this regard, Mr. Lovell and Mr. Horwood entered into an agreement on or about August 8, 1999, regarding the above-referenced portable spa. An informal document regarding that agreement provided that Mr. Lovell and Mr. Horwood have equal ownership of the invention, agree to any changes,

decisions, and compensate the other for any time and/or money spent in regard to the invention, and each has the right of first refusal if the other should want to sell his share of the invention. That informal agreement appears to be silent regarding what is to be done if Mr. Lovell and Mr. Horwood are unable of agree on certain issues such as prosecution of the application. No further writings apparently were made to modify that agreement. The parties proceeded with filing a patent application, which issued as U.S. Pat. No. 6,584,624 on July 1, 2003, and with the filing of the present related application. Although Mr. Lovell and Mr. Horwood have subsequently had some verbal discussions and/or agreements regarding various issues, they have reached an impasse as to other issues, leading to the aforementioned withdrawal of Mr. Summers participation in this application and to the need for the grant of the present petition under 37 C.F.R. §1.183 in order for Mr. Horwood to keep alive the application. Details of Mr. Horwood's efforts to obtain Mr. Lovell's cooperation are included in other documents filed herewith.

In support of this petition, applicant submits the following:

- Exhibit A. Declaration of Tim P. Horwood;
- Exhibit B. Letter Dated September 10, 2004, addressed to Mr. Keith Lovell at his last known address of: 8 Navajo Trail, Phillips Ranch, CA 91766
- Exhibit C. Assignment recorded on January 26, 2000.
- Exhibit D. Copy of Response to Election Requirement as filed on September 20, 2004.

Based on the present petition, Applicant respectfully requests that the application be kept "alive" and not abandoned, and the Response to Election Requirement, previously presented and attached hereto as Exhibit D, be considered and entered.

Applicant believes that a fee, under 37 C.F.R. 1.17(h), in the amount of \$130.00 is due. Applicant has enclosed a Fee Transmittal for FY2004 and credit card authorization for this amount. The fee in the amount of \$1,005.00 for a five (5) month extension of time in regard to Applicant's Response

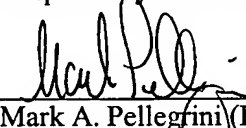
to the Election Requirement was previously charged to Applicant's credit card, receipt number 6741779LV17PMKE2T on September 22, 2004.

The Commissioner is, however, hereby authorized to charge any underpayment of fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2624.

Respectfully submitted,

Date:

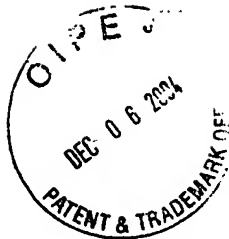
12/03/04

  
Mark A. Pellegrini (Reg. No. 50,233)  
J. Mark Holland & Associates,  
a Professional Law Corporation  
3 Civic Plaza, Suite 210  
Newport Beach, California 92660  
Telephone: 949-718-6750  
PTO Customer Number 21,259

MAD/mmh

Enclosures: Transmittal, Fee Transmittal for FY 2005, Credit Card Authorization Form, Return Receipt Postcard and Exhibits A-D

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Docket No. HORWO-P3197

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Tim P. Horwood, et al.

Serial No.: 10/606,605

Art Unit: 3751

Filed: June 26, 2003

Examiner: Phillips, Charles E.

For: PORTABLE SPA

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**DECLARATION OF TIM P. HORWOOD**

Sir:

The undersigned, being advised that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application (or document) or any resulting registration, hereby states the following:

1. My name is Tim P. Horwood. I am a joint inventor of the above-identified patent application, filed under U.S. App. No. 10/606,605, along with Keith W. Lovell and John E. Pope.
2. The above-identified patent application is a continuation of U.S. Patent Application Ser. No. 10/137,929 filed May 2, 2002 (which issued as U.S. Patent No. 6,584,624 on or about July 1, 2003) (the '929 application). That '929 application was a

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Mark A. Pellegrini, Reg. No. 50,233  
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Sept 20, 04  
DATE



continuation of U.S. Patent Application Ser. No. 09/491,361, which was filed on or about January 26, 2000 (and which is now abandoned) (the '361 application).

3. In that first '361 application, Mr. Pope assigned all right, title and interest in and to the '361 application, as well as any future continuation applications, to Mr. Lovell and myself. That assignment was recorded on or about January 26, 2000 at Reel/Frame 010553/0625). A true and correct copy of that Assignment is attached hereto as Exhibit A.
4. After that January 2000 filing of the original '361 application, Mr. Lovell and I proceeded with prosecution of that application and the related continuation '929 application (including through issuance of that '929 application in July 2003), as well as the June 2003 filing of the current related/pending '605 application. Since approximately August 2003, however, Mr. Lovell and I no longer maintain a cordial relationship due to, among other things, a disagreement regarding maintenance of that issued U.S. Patent No. 6,584,624 (from the '929 application) and prosecution of this further continuation application (the '605 application).
5. Since those disagreements arose, both Mr. Lovell and I directly, and the attorney (Craig Summers) who had been representing Mr. Lovell and me in connection with the '624 patent (issued from the '929 application), made repeated various efforts to resolve those disagreements. Following the PTO's Election Requirement (dated March 19, 2004), our previous attorney Mr. Summers advised that he could not continue representing both Mr. Lovell and me in this application, because of those disagreements and the apparent/actual conflict of interest they caused. Consequently, Mr. Summers withdrew as our attorney in connection with this application, which withdrawal I understand was effective just a few weeks ago, on or about July 2004. I understand

that Mr. Lovell is aware of all of the foregoing facts, including the withdrawal by Mr. Summers.

6. In view of the foregoing, I have retained another firm, J. Mark Holland & Associates, regarding the conflict between Mr. Lovell and me and specifically in order to prevent the pending '605 application from going abandoned.
7. Mr. Lovell is married to my sister, and the disagreement has affected communications within and among our family. Mr. Lovell has made it clear to me that he and his wife (my sister) do not want to see me, and he has stated that he would try to physically harm me if I came by to see him. Notwithstanding those threats, I made numerous attempts to discuss and resolve the matter with Mr. Lovell through our attorney, Craig Summers. When those attempts were not successful, on or about September 10, 2004 I wrote a letter to Mr. Lovell confirming my understanding of the status of the March 2004 Election Requirement and the response deadline of September 19, 2004 in relation thereto. A true and correct copy of that correspondence is attached as Exhibit B.
8. As shown in Exhibit B, I sent that letter to the last known address I have for Mr. Lovell, namely: 8 Navajo Trail, Phillips Ranch, California 91766. In view of the short time remaining before the deadline for response, I caused that letter to be sent to Mr. Lovell by both facsimile and hand delivery. Regarding that hand delivery, one of my employees, Nicholas F. Peloso, delivered the letter by hand to Mr. Lovell's wife (my sister) on September 10, 2004 (as shown by Mr. Peloso's sworn affidavit attached as Exhibit C), and saw Mr. Lovell drive up as Nicholas F. Peloso was leaving the premises after that delivery. Regarding sending it via facsimile, I attempted to send the letter but the facsimile was unsuccessful at the number I

thought was his current facsimile. In any case, I have not received any response from Mr. Lovell.

9. I was hoping that Mr. Lovell would have reconciled with me (he chose the separation), and would be able to talk with me but time (for the PTO deadline) has run out. Mr. Lovell knew that time was running out but never contacted me.
10. As described above, I have made diligent efforts to obtain instructions from my co-inventor, Keith Lovell, regarding filing the aforementioned Election Requirement and responding to same. Mr. Lovell has not responded or advised of his position regarding same.
11. Based on the foregoing, and in order to prevent the present application from going abandoned, I requested that Mr. Holland's firm prepare and file a response to the Election Requirement.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 9/20/04

By: Tim Horwood  
Tim P. Horwood

***Tim P. Horwood***

14562 Central Ave. Chino, CA 91710 (909) 606-8884 Fax# (909) 606-8820

September 10, 2004

Mr. Keith Lovell  
8 Navajo Trail  
Phillips Ranch, CA 91766

SENT VIA HAND-DELIVERY 09.10.04  
SENT VIA FAX 09.10.04

RE: PENDING U.S. PAT. APPLICATION  
SER. NO. 10/606, 605

Dear Keith:

I hope all is well with you, Shirlee and the girls.

I am contacting you regarding our patent application. I understand that Craig Summers sent to you a copy of the Office Action received in March. I haven't heard from you in the many months since Craig's letter. Time is running out to respond and if something doesn't happen it will go abandoned. I don't want to abandon our patent application.

I have retained a new patent attorney, J. Mark Holland & Associates. He said he can answer the pending Office Action and I would like to have him do that. I want to know what you would like to do.

Due to the time constraints to draw up the response and any related papers, and the fact that I am very tied up next week, there really is no more time left for contemplation.

I feel that putting things aside regarding our relationship and the past is very important. With all the time, effort, money and heartache we and our families have put into this invention, it would be sad to abandon it. Let's both at least have a chance at making our patent coverage even stronger and more complete.

Please let me know within forty-eight hours of today's date (9/10/04) if you wish to abandon our patent application or you wish to answer it. If you want to continue to own one-half of this patent application, you will need to pay one-half of my fees (Attorney fees, filing fees, etc.).

Mr. Keith Lovell  
September 10, 2004  
Page Two

If you choose to hire your own Attorney please let me know. I will fax you correspondence to keep you apprised at what is going on with the patent.

Just for your information, if you do not respond within forty-eight hours of this official notice, I will be forced to answer the Office Action alone and I will pay all fees, thus taking full ownership of the new patent.

I await your response.

Sincerely,



Tim P. Horwood

cc: J. Mark Holland & Associates  
3 Civic Plaza, Ste. 210  
Newport Beach, CA 92660

AFFIDAVIT

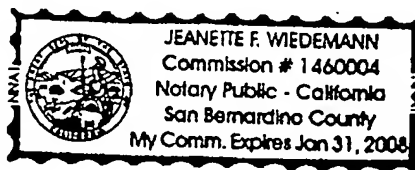
State of California  
County of San Bernardino

I, Nicholas F. Peloso, hand-delivered to Mrs. Shirlee Lovell, a 2-page letter from Tim P. Horwood regarding Pending U.S. Patent Application, Ser. No. 10/606, 605. I hand-delivered this 2-page letter on September 10, 2004, at approx. 2:15 p.m., at address 8 Navajo Trail, Phillips Ranch, CA 91766.

Nicholas F. Peloso 9/20/04  
Nicholas F. Peloso Date

Sworn and subscribed before me this 20th day of September  
A.D. 2004.

Notary Jeanette F. Wiedemann Sept. 20, 2004  
Witness Date



H220000-0014

C66



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
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OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APRIL 21, 2000

PTAS

KNOBBE, MARTENS, OLSON & BEAR, LLP  
CRAIG S. SUMMERS  
620 NEWPORT CENTER DRIVE  
SIXTEENTH FLOOR  
NEWPORT BEACH, CA 96220



\*101272232A\*

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

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RECORDATION DATE: 01/26/2000

REEL/FRAME: 010553/0625  
NUMBER OF PAGES: 2

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:  
POPE, JOHN E.

DOC DATE: 01/21/2000

ASSIGNEE:  
LOVELL, KEITH W.  
8 NAVAJO TRAIL LANE  
POMONA, CALIFORNIA 91766

NO DATES SOCKET  
STAMP RESPONSE  
INITIAL

ASSIGNEE:  
HORWOOD, TIM P.  
14733 WILLOW CREEK LANE  
CHINO HILLS, CALIFORNIA 91709

SERIAL NUMBER: 09491361  
PATENT NUMBER:

FILING DATE: 01/26/2000  
ISSUE DATE:

010553/0625 PAGE 2

ANTIONE ROYALL, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS



Application No.: Unknown  
Filing Date: Herewith

PATENT  
Client Code: HORWOOD.001A  
Page 1

# ASSIGNMENT

WHEREAS, We, Tim P. Horwood, a Canadian citizen, residing at 14733 Willow Creek Lane, Chino Hills, CA 91709, Keith W. Lovell, a United States citizen, residing at 8 Navajo Trail Lane, Pomona, CA 91766, and John E. Pope, a United States citizen, residing at 14300 Clinton Street, #4, Garden Grove, CA 92843, have invented certain new and useful improvements in a PORTABLE SPA for which we have executed an application for Letters Patent in the United States, on even date herewith;

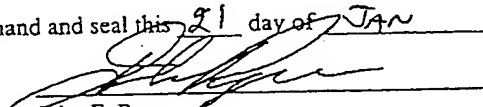
AND WHEREAS, Keith W. Lovell and Tim P. Horwood (hereinafter "ASSIGNEES"), desire to acquire the entire right, title, and interest in and to the said improvements and the said Application;

AND WHEREAS, John E. Pope desires to transfer his entire right, title and interest in and to the said improvements and the said Application to ASSIGNEES;

NOW, THEREFORE, in consideration of the sum of One Hundred Dollars (\$100.00) to me in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, I, John E. Pope, do hereby acknowledge that we have sold, assigned, transferred and set over, and by these presents do hereby sell, assign, transfer and set over, unto the said ASSIGNEES, their successors, legal representatives and assigns, the entire right, title, and interest throughout the world in, to and under the said improvements, and the said Application and all divisions, renewals and continuations thereof, and all Letters Patent of the United States which may be granted thereon and all reissues and extensions thereof, and all rights of priority under International Conventions and applications for Letters Patent which may hereafter be filed for said improvements in any country or countries foreign to the United States, and all Letters Patent which may be granted for said improvements in any country or countries foreign to the United States and all extensions, renewals and reissues thereof; and I hereby authorize and request the Commissioner of Patents of the United States, and any Official of any country or countries foreign to the United States, whose duty it is to issue patents on applications as aforesaid, to issue all Letters Patent for said improvements to the said ASSIGNEES, their successors, legal representatives and assigns, in accordance with the terms of this instrument.

AND I HEREBY covenant and agree that I will communicate to the said ASSIGNEES, their successors, legal representatives and assigns, any facts known to me respecting said improvements, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing and reissue applications, make all rightful oaths and generally do everything possible to aid the said ASSIGNEES, their successors, legal representatives and assigns, to obtain and enforce proper patent protection for said improvements in all countries.

IN TESTIMONY WHEREOF, I hereunto set my hand and seal this 21 day of Jan 2000.

  
John E. Pope

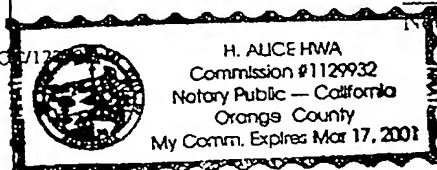
STATE OF CALIFORNIA  
COUNTY OF ORANGE } ss.

On Jan. 21, 2000, before me, H. Alice Hwa, personally appeared John E. Pope personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]

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Notary Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Horwood et al.

Serial No.: 10/606,605

Art Unit: 3751

Filed: June 26, 2003

Examiner: Phillips, Charles E.

For: PORTABLE SPA

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Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**RESPONSE TO ELECTION REQUIREMENT**

Sir:

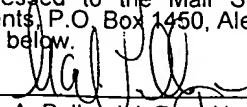
This responds to the Examiner's election requirement of March 19, 2004.

As set forth in other documents being filed contemporaneously herewith, this response is being filed by inventor/assignee Horwood, due to the unavailability of his joint inventor/co-assignee Lovell.

The Examiner has indicated that the application contains claims directed to patentably distinct species of the claimed invention. However, the Examiner has not clearly identified each of the disclosed species (MPEP 809.02(a)) except by way of figure groupings 1 and 6. In other words, there is no detailed indication of a substantive basis for the aforementioned restriction. Applicant respectfully requests clarification in that regard, and reserves its rights to revise its election in view of any such clarification or upon further consideration of same.

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Mark A. Pellegrini, Reg. No. 50,233

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Sept 26, 04  
DATE

In the absence of that further detail, and in an effort to advance the prosecution of this application, Applicant has reviewed the claims and hereby provisionally elects the species as disclosed in Figure 6. Applicant respectfully submits that the claims that read on that species appear to include at least Claims 17-18.

In addition to the above-indicated election, please amend Claim 17 of the above-identified application as indicated on the enclosed separate sheet. In this regard, Claims 1-18 were previously presented. Claims 1-16 have been withdrawn without prejudice, and Claim 17 has been amended. Thus, after entry of the present response, Claims 17-18 will be pending.

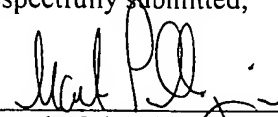
By the foregoing comments, Applicant has addressed the restriction requirement. In view of same, Applicant respectfully submits that the foregoing claims should be allowable, notice whereof is respectfully requested of the Examiner.

If the Examiner has any questions regarding the foregoing, or if the Examiner would like to discuss any remaining issues or new issues regarding this communication, the Examiner is invited to contact the undersigned representative of Applicant at (949) 718-6750.

Respectfully submitted,

Date:

Sept 20, 04

  
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## Amendment to the Claims

1. (Withdrawn) A spa, comprising:
  - (a) a reservoir for holding water;
  - (b) an outer wall spaced outwardly from the reservoir;
  - (c) an equipment bay located in and accessible from an opening at the top portion of the spa between the outer wall and the reservoir, wherein the equipment bay contains substantially all of the equipment necessary for the operation of the spa; and
  - (d) a cover over the opening to the equipment bay that can be opened from the top portion of the spa to permit access to the equipment bay, free of any obstructions around the outer wall of the spa.
2. (Withdrawn) The spa of claim 1, further comprising a substantially horizontal coping that joins the reservoir to the outer wall, and wherein the opening to the equipment bay is provided in the coping.
3. (Withdrawn) The spa of claim 1, wherein the cover may be sealed to the opening in a substantially watertight manner.
4. (Withdrawn) The spa of claim 1, wherein the equipment for operating the spa includes a heater and a water pump.
5. (Withdrawn) The spa of claim 4, wherein the equipment for operating the spa includes a water filter comprising a filtration compartment normally flooded with water from the reservoir and filter cartridges for filtering impurities from the water.
6. (Withdrawn) The spa of claim 1, further comprising reinforcing means located between the outer wall and the reservoir for supporting the outer wall against deformation from external forces, whereby the spa can be installed below ground level and can withstand external forces from excavated ground applying pressure against the outer wall.
7. (Withdrawn) The spa of claim 6, wherein the reinforcing means comprises a plurality of internal support elements that resist lateral external forces against the outer wall.
8. (Withdrawn) The spa of claim 7, wherein the reinforcing means further comprises a dense foam material or other suitable filler.
9. (Withdrawn) The spa of claim 6, wherein the reinforcing means comprises a dense foam material or other suitable filler.
10. (Withdrawn) A spa, comprising:
  - (a) an inner wall defining a reservoir for holding water;
  - (b) an outer wall spaced from the inner wall, wherein the inner wall and the outer wall define a top surface that covers the space between the inner wall and the outer wall at an upper end of the spa, and wherein the outer wall includes a bottom surface constructed to contact the ground and support the spa; and a substantially vertical side wall extending from the bottom surface to the top surface;
  - (c) an equipment bay located in and accessible from an opening at the top surface of the spa between the inner wall and the outer wall that contains substantially all of the equipment for operating the spa, including a pump, a heater, a filter and control equipment; and
  - (d) a cover that covers the opening in the top surface of the spa, wherein the cover can be opened to permit access to the equipment in the equipment bay free of any obstructions around the vertical side wall of the spa.

11. (Withdrawn) The spa of claim 10, further comprising reinforcing means located between the outer wall and the inner wall for supporting the spa, including the outer wall and its associated side wall, against deformation from external forces, such that the spa can be installed below ground level and can withstand external subjacent forces from the ground surrounding and abutting the outer wall.
12. (Withdrawn) The spa of claim 11, wherein the reinforcing means comprises a plurality of internal support elements that structurally support the outer wall against external forces.
13. (Withdrawn) The spa of claim 12, wherein the support elements comprise elongated rigid supports having one end connected to an inner surface of the side wall and another end connected to an inner surface of the bottom wall.
14. (Withdrawn) The spa of claim 11, wherein the reinforcing means comprises a framework substantially supporting the outer wall, including a plurality of horizontal bottom support elements, a plurality of horizontal top support elements, a plurality of vertical support elements connecting the bottom support elements to the top support elements, and a plurality of bracing elements connected at an angle between the vertical support elements and the horizontal bottom elements.
15. (Withdrawn) The spa of claim 14, wherein the framework is comprised of pressure treated wood.
16. (Withdrawn) A spa, comprising:
- (a) a reservoir for holding water;
  - (b) a vertical outer wall surrounding the reservoir;
  - (c) an equipment bay located in and accessible from an opening at a top portion of the spa between the outer wall and the reservoir, wherein the equipment bay contains substantially all of the equipment necessary for the operation of the spa;
  - (d) a cover over the opening to the equipment bay that can be opened to permit access to the equipment in the equipment bay, wherein the cover is removable free of any obstructions around the perimeter of the outer wall; and
  - (e) reinforcing means located between the outer wall and the reservoir for supporting the outer wall against deformation from external forces, such that the spa can be installed above ground or below ground level and can withstand subjacent external forces from the ground exerted against the outer wall.
17. (Currently Amended) A spa, comprising:
- (a) a reservoir for holding water;
  - (b) an outer wall spaced outwardly from the reservoir;
  - (c) an equipment bay located between the outer wall and the reservoir, wherein the equipment bay ~~that~~ contains substantially all of the equipment necessary for the operation of the spa; and
  - (d) reinforcing means located between the outer wall and the reservoir for supporting the outer wall against deformation from external forces, such that the spa can be installed above ground level or below ground level and can withstand subjacent external forces from the ground exerted against the outer wall.
18. (Original) The spa of claim 17, further comprising
- (a) an opening in the outer wall at a side of the spa through which the equipment in the equipment bay can be accessed;

(b) a cover over the opening to the equipment bay that can be opened to permit access to the equipment; and

(c) a shield over the opening at the side of the spa that can withstand deformation from external forces from the ground exerted against the shield, wherein the shield is spaced from the opening such that the spa can be installed below ground level and the equipment bay can be accessed by opening the cover.

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